IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs September 21, 2009

# MELISSA L. BRIGHT DOCKERY v. KEVIN CARL DOCKERY, SR.

**Appeal from the Fourth Circuit Court for Knox County**
**No. 77839 Bill Swann, Judge**

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**No. E2009-01059-COA-R3-CV - Filed October 29, 2009**

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In December 2008, Kevin Carl Dockery, Sr. ("Husband"), was found guilty of seventeen counts of criminal contempt for violating an order of protection in favor of his ex-wife, Melissa L. Bright Dockery ("Wife"). Husband was sentenced to 10 days in jail for each violation, for a total of 170 days. Husband already had served 40 days in jail. He was sentenced to time served, with the remaining 130 days to be held in abeyance pending strict compliance with the order of protection. No appeal was taken from that judgment. Soon after being released from jail, Husband yet again began violating the order of protection. Wife filed two motions seeking to have Husband held in criminal contempt for these new violations of the order of protection. Following a trial, Husband was found guilty of seven additional counts of criminal contempt. Husband was ordered to serve 10 days in jail for each violation, for a total of 70 days in jail. In addition, Husband was ordered to serve the 130 days previously held in abeyance, less time served of 57 days. This resulted in an effective sentence of 143 additional days in jail. Husband appeals raising numerous issues. For the reasons discussed below, we vacate one of the seven findings of criminal contempt. In all other respects, the judgment of the Trial Court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Fourth Circuit Court Affirmed in Part and Vacated in Part; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Ben H. Houston, II, Knoxville, Tennessee, for the Appellant, Kevin Carl Dockery, Sr.

Lisa A. White, Knoxville, Tennessee, for the Appellee, Melissa L. Bright Dockery.

## OPINION

### Background

The record in this case begins with a petition for an order of protection filed by Wife in November 1997. Wife alleged that Husband was being physically and verbally abusive to her, and she believed she was in immediate and present danger. The Trial Court issued an ex parte order of protection prohibiting Husband from "abusing, threatening to abuse, or committing acts of violence" upon Wife. Although a hearing was set for December 4, 1997, Wife decided not to pursue the order of protection, and her petition was dismissed.

In February 2000, Wife filed another petition seeking an order of protection. Among other things, Wife alleged that on one occasion Husband had hit her with his fist so many times that she was knocked unconscious. Wife also alleged that Husband threatened to kill her and that he had "busted out" her car windows. The Trial Court again issued another ex parte order of protection. A hearing was set for February 24, 2000. Once again, Wife decided not to pursue the order of protection, and her petition was dismissed.

In October 2008, Wife filed another petition seeking an order of protection. By this time, the parties, who have three minor children, were divorced.[1] In this petition, Wife claimed that she was at one of the children's sporting events and Husband physically attacked her. As with the previous petitions, the Trial Court issued an ex parte order of protection and set the matter for a hearing. The ex parte order of protection was a "no contact" order of protection and thus prohibited Husband from contacting Wife. The order was entered on October 21, 2008, and a hearing was scheduled for November 20, 2008. Prior to the hearing, Wife filed a petition for contempt claiming that she had received numerous phone calls from Husband using a "restricted number" and that all four of her car tires had been slashed. At the hearing on November 20, the Trial Court determined that because Husband was at jeopardy for incarceration, an attorney needed to be appointed on his behalf. Accordingly, Husband was appointed an attorney, and the hearing was rescheduled for December 18, 2008. The Trial Court also entered an order keeping the terms of the ex parte order of protection intact pending the December hearing.

Following the December 18 hearing, the Trial Court found that after Husband had been served with the ex parte order of protection, he explicitly violated that order on 17 different occasions. Husband was found guilty of 17 counts of criminal contempt and sentenced to 10 days in jail for each violation. Husband was ordered to serve 40 days in jail for time already served, with the remaining 130 days to be held in abeyance "pending strict compliance with this order." The order of protection was extended for five years. Husband agreed to undergo a mental health evaluation and to follow any treatment recommendations. Husband did not appeal from the 17 findings of criminal contempt or the sentence imposed for those violations and that judgment is final.

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[1] Even though the parties eventually divorced, for ease of reference only we will continue to refer to them as "Wife" and "Husband."

On January 12, 2009, Wife filed a Motion for an Order to Show Cause and/or Writ of Attachment seeking to have Husband jailed for further violations of the order of protection. Wife claimed that soon after being released from jail for the previous criminal contempt charges, Husband continued to violate the order of protection by contacting her and making threats to harm her and their children. In this motion, Wife detailed 10 specific alleged violations of the order of protection. A hearing on the motion was scheduled for February 19, 2009. Before the hearing could take place, Wife filed a second Motion for an Order to Show Cause and/or Writ of Attachment and detailed 12 additional alleged violations of the order of protection. This brought the number of alleged violations occurring after Husband was released from jail to 22.

Husband was arrested and his bond was set at $100,000. Soon thereafter, Husband filed a motion seeking to have the bond lowered. Husband also filed a motion requesting a jury trial. The Trial Court lowered Husband's bond to $50,000, although it does not appear from the record before us that Husband was able to make bond. The Trial Court denied Husband's request for a jury trial.

All pending matters were referred to a special master and a hearing on the 22 new allegations of criminal contempt was held on March 12, 2009. Following the hearing, the Special Master found Husband guilty of 7 counts of criminal contempt. Husband was sentenced to a total of 70 days in jail and also was ordered to serve the 130 days that had been held in abeyance. Husband was given credit for 57 days already served, resulting in an effective sentence of 143 additional days to be served. The findings by the Special Master were adopted and approved by the Trial Court in toto.

Husband appeals raising the following issues: (1) whether the Trial Court erred when it referred the main issues to a special master; (2) whether the Special Master erred by allowing Wife to prosecute allegations of criminal contempt that were not part of the 22 claims specifically set forth in Wife's two motions; (3) whether the Trial Court erred when it denied Husband's request for a jury trial; (4) whether the Special Master erred by permitting the introduction of certain evidence at trial; (5) whether the Special Master erred by giving Husband the option of either agreeing to the admission of certain evidence or having the trial continued; (6) whether the Special Master applied the wrong burden of proof when finding Husband guilty of criminal contempt; (7) whether the Special Master's finding that Husband was guilty of seven additional counts of criminal contempt was supported by the evidence; and (8) whether the sentence of 200 days in jail was error. Wife claims the Trial Court was correct in all of its various rulings. The only issue raised by Wife is her claim that all of Husband's issues on appeal are moot because he has completed his jail sentence.[2]

[2] Although we discuss Wife's claim of mootness later in this Opinion, we initially note that in addition to a jail sentence, Husband also was ordered to pay Wife's attorney fees. Thus, we reject Wife's claim that this entire appeal is moot.

## Discussion

In *Archer v. Archer*, 907 S.W.2d 412 (Tenn. Ct. App. 1995), we explained that our standard of review is affected by a trial court's referral of issues to a special master. We stated:

> The court's order referencing certain matters to the Special Master, the Special Master's report, and the trial court's order affect our standard of review on appeal. A concurrent finding of a master and a trial court is conclusive on appeal, except where it is upon an issue not proper to be referred, where it is based on an error of law or a mixed question of fact and law, or where it is not supported by any material evidence. *Coates v. Thompson*, 713 S.W.2d 83, 84 (Tenn. Ct. App. 1986). This standard of review is similar to our standard when reviewing a jury verdict; we must affirm if there is any material evidence to support the trial court's concurrence. *See Id.*; T.R.A.P. 13(d). . . .

*Archer*, 907 S.W.2d at 415.

Husband's argument on appeal is that the criminal contempt issues were not issues that could properly be referred to a Special Master. According to *Archer*:

> The main issues of a controversy and the principles on which these issues are to be adjudicated must be determined by the trial court. *State v. Bolt*, 130 Tenn. 212, 169 S.W. 761, 762 (1914); *Ingram v. Stein*, 23 Tenn. App. 105, 126 S.W.2d 891, 892 (1938). Collateral, subordinate, and incidental issues and the ascertainment of ancillary facts are matters properly referred to a special master. *Ingram*, 126 S.W.2d at 892.

*Archer*, 907 S.W.2d at 415-16.

In his brief on appeal, Husband asserts that when the Trial Court referred the criminal contempt issues to a special master, it did so over his objection. Husband cites this Court to a very short transcript of a discussion between counsel and the Trial Court which occurred immediately before the case was tried by the Special Master. This transcript does include a discussion about the mechanics of referring the criminal contempt issues to a special master, but does not contain any actual objection to the referral. In no manner can this discussion be construed as an objection by Husband on the basis that the Special Master did not have the authority to hear the criminal contempt charges.

In *Clear Channel Outdoor, Inc. v. A Quality, Inc.*, No. W2007-00213-COA-R3-CV, 2008 WL 2901345 (Tenn. Ct. App. July 29, 2008), *no appl. perm. appeal filed*, we stated:

> Clear Channel had ample opportunity to object to the trial court's decision to appoint a special master, and in particular to its appointment of Buring, but did not do so. It is well-settled that a litigant "cannot wait until after the trial court has conducted its hearing and ruled on the master's report to raise new objections to the report." *Harlan v. Soloman*, No. M2003-01396-COA-R3-CV, 2005 WL 110172, at *2 (Tenn. Ct. App. Jan. 19, 2005) (citations omitted). Clear Channel's argument on this issue is without merit.

*Clear Channel*, 2008 WL 2901345, at *7.

As stated, the transcript referenced by Husband contains no objection by Husband to the criminal contempt charges being referred to a special master and, more importantly, does not contain a specific objection asserting that this was a matter not properly referable. Because Husband does not cite us to anywhere in the record showing that such an objection was made, we consider this issue waived.

The two motions for contempt filed by Wife described 22 specific incidents which she claimed constituted criminal contempt by Husband. At the trial before the Special Master, counsel for Wife announced that she would be pursuing those 22 counts set forth in her motions, plus an additional 17 counts, for a total of 39. Husband objected to Wife pursuing anything other than the 22 counts contained in Wife's motions. The objection was overruled, and Husband claims this was error.

In *Moody v. Hutchison*, 159 S.W.3d 15 (Tenn. Ct. App. 2004) we stated:

> A charge of criminal contempt is somewhat peculiar because such a charge encompasses aspects of both criminal law and civil law. In a criminal contempt case, many of the constitutional protections afforded a criminal defendant must be observed. For example, as discussed above, guilt must be proven beyond a reasonable doubt. *See Shiflet v. State*, 217 Tenn. 690, 400 S.W.2d 542 (Tenn. 1966). In *State v. Wood*, 91 S.W.3d 769 (Tenn. Ct. App. 2002), this Court noted that criminal contempt was "enough of a crime" for the double jeopardy provisions in the federal and state constitutions to apply. *Id.* at 773 (citing *Ahern v. Ahern*, 15 S.W.3d 73 (Tenn. 2000)). On the other hand, criminal contempt is "not enough of a crime" to require initiation by an indictment or presentment, and there is no right to a trial by jury. *State v. Wood*, 91 S.W.3d at 773. *Case law is clear, however, that criminal contempt is "enough of a crime" to require proper notice.*

*Moody*, 159 S.W.3d at 27 (emphasis added).

The notice to which Husband was entitled must conform with Tenn. R. Crim. P. 42, which provides in pertinent part as follows:

> **Rule 42. Criminal Contempt. –** (a) Summary Disposition. – A judge may summarily punish a person who commits criminal contempt in the judge's presence if the judge certifies that he or she saw or heard the conduct constituting the contempt. The contempt order shall recite the facts, be signed by the judge, and entered in the record.
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> (b) Disposition on Notice and Hearing. A criminal contempt shall be prosecuted on notice, except as provided in subdivision (a) of this rule.
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> (1) Content of Notice. The criminal contempt notice shall:
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> (A) state the time and place of the hearing;
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> (B) allow the defendant a reasonable time to prepare a defense; and
>
> (C) state the essential facts constituting the criminal contempt charged and describe it as such.
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> (2) Form of Notice. The judge shall give the notice orally in open court in the presence of the defendant or, on application of the district attorney general or of an attorney appointed by the court for that purpose, by a show cause or arrest order.

Simply announcing at the beginning of trial that 17 additional counts of criminal contempt were going to be pursued is woefully insufficient to comply with the notice requirements of Tenn. R. Crim. P. 42. Having said that, with one possible exception noted below, all seven of the criminal contempt findings made by the Special Master were part of the 22 claims specifically set out in Wife's motions. Thus, while we agree with Husband's general assertion that Wife could not pursue any allegations of contempt not contained in her two motions and the Special Master erred by allowing her to do so, because Husband was not found guilty of any of these additional counts, we find no reversible error.

A closely related issue surrounds whether Husband had proper notice as to one of the seven findings of criminal contempt. Specifically, Wife's first motion seeking to have Husband held in contempt cites the following conduct:

> On a date soon after being released from jail, [Husband] e-mailed Wendy Lowe, a friend of [mine] asking [Ms. Lowe] to have [me] call him.

In the Special Master's report, the Special Master found that Husband had emailed Ms. Lowe on two occasions that same day and, therefore, Husband was guilty of two distinct counts of criminal contempt.[3] Husband argues that Wife's motion does not show that she was pursuing two different counts of criminal contempt as to Husband's emailing Ms. Lowe, and in order for Husband to have received proper notice, Wife's motion should have clearly set forth her position that he had engaged in this alleged conduct at two different times on the same day.

The language in Wife's motion is ambiguous and could be read as asserting only one alleged violation. It also could be read as asserting more than one alleged violation. Because Wife's motion does not clearly indicate that she was pursuing two different counts of criminal contempt arising from the emails sent by Husband to Ms. Lowe, we vacate one of the findings of criminal contempt.

Husband's next issue is his claim that the Trial Court erred when it denied his request for a jury trial. As set forth previously, in *Moody* we explained that a criminal contempt proceeding "is 'not enough of a crime' to require initiation by an indictment or presentment, and there is no right to a trial by jury. *State v. Wood*, 91 S.W.3d at 773." *Moody*, 159 S.W.3d at 27. A case similar to the present case is *Sliger v. Sliger*, 181 S.W.3d 684 (Tenn. Ct. App. 2005).[4] In *Sliger*, the defendant was found guilty of 21 violations of an order of protection and sentenced to serve 10 days in jail for each violation. The trial court also reinstated an additional 310 days of incarceration for 31 earlier violations. As in the present case, the trial court in *Sliger* had stayed enforcement of the earlier violations so long as there were no further violations of the order of protection. Thus, the defendant in *Sliger* was effectively sentenced to 520 days in jail. Because each offense carried only a maximum penalty of ten days in jail, we held that "the defendant . . . was not entitled to a jury trial. *See also Perkerson v. Perkerson*, No. 01A01-9602-CV-00059, 1996 WL 426807, at *3 (Tenn. Ct. App. M.S., filed July 31, 1996) (holding that 'the violation of a court order, punishable by a fifty dollar fine and/or ten days in jail under Tenn. Code Ann. § 29-9-103,' does not entitle the accused to a jury trial)." *Sliger*, 181 S.W.3d at 690-91.

In light of the foregoing, we find that Husband was not entitled to a jury trial. We affirm the Trial Court's judgment as to this issue.

Husband's next issue is evidentiary as he challenges the admission of two types of evidence. As noted previously, Husband was found guilty of two counts of criminal contempt based on the content of communications he had with Ms. Lowe. Ms. Lowe was called as a witness at trial. Ms. Lowe testified to the two times Husband contacted her on MySpace and asked her to contact Wife and have Wife call him. Ms. Lowe printed these communications with Husband and they were admitted as evidence at trial. Ms. Lowe testified that the copies accurately depicted the communications she had with Husband. Husband objected to the admission of the printouts on the

[3] Husband was found in contempt based on the contents of the emails. He otherwise was not prohibited from emailing Ms. Lowe.

[4] Judge Bill Swann was the trial judge in *Sliger* and also is the trial judge in the present case.

basis that they had not been properly authenticated. The Special Master inquired of Husband's attorney exactly what Tenn. R. Evid. 901 required in this regard, and counsel responded:

> The rule reads, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the Court to support a finding by the trier of facts that the matter in question is what the proponent claims."

The Special Master then asked Ms. Lowe where the documents came from. Ms. Lowe stated that she printed them directly from her computer. Ms. Lowe added that the printouts showed exactly what Husband said, as well as what she said, and identified which party to the conversation was making a particular statement. The Special Master then concluded that Ms. Lowe was able to "authenticate these documents as having been printed from her computer. So I will allow them to be admitted into evidence . . . ."

The second evidentiary challenge involves pictures admitted at trial. Wife testified that on January 13, 2009, Husband, while following her, rammed her car with his car numerous times and used his car to try to push her car into oncoming traffic. Pictures of the property damage to Wife's car were admitted into evidence. Wife testified that the pictures accurately depicted the damage done to her vehicle by Husband on January 13, 2009.

On appeal, Husband argues that the computer printouts of the conversations between Husband and Ms. Lowe could be authenticated only by a representative of MySpace. As to the pictures, Husband claims the Special Master improperly admitted the pictures because there was no testimony as to who took the pictures, where they were taken, or when they were taken.

Counsel for Husband correctly quoted Tenn. R. Evid. 901(a) which requires evidence sufficient to satisfy the court that the matter in question is what its proponent claims. This is *exactly* what happened with respect to the MySpace printouts. We agree with the Special Master that this evidence was properly authenticated by Ms. Lowe, and that a representative from MySpace was not a prerequisite to its admission. We reach the same result as to the pictures of the property damage done to Wife's automobile. Wife's testimony as to what happened on January 13, 2009, and what the pictures showed obviously was sufficient to convince the Special Master that the pictures showed what Wife claimed them to show and that they accurately depicted the damage to her car.

We affirm the Special Master's evidentiary rulings for several reasons. First, as to both rulings and in accordance with Tenn. R. Evid. 901(a), it is clear that the evidence was authenticated to the point to satisfy the Special Master. We agree with these findings. Second, the admission of evidence lies within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion. *State v. Robinson*, 146 S.W.3d 469, 490 (Tenn. 2004). There has been no showing that the admission of this evidence was an abuse of discretion.

With regard to the photographs, a photograph has to be a true and accurate representation of what it purports to show; here, the damage caused by Husband to Wife's car. *See* Neil P. Cohen, Sarah Y Sheppeard & Donald F. Paine, Tennessee Law of Evidence § 4.01[18][e]

(5th ed. 2005) ("A photograph can be authenticated by proof that it depicts what it is claimed to depict."). Wife testified at trial to the damage to her vehicle caused by Husband, and that the photographs accurately showed the damage to her car. This was sufficient to authenticate the photographs.

As to the emails between Husband and Ms. Lowe, Ms. Lowe testified to the contents of the conversation between her and Husband, and that the printouts accurately reflected those conversations. We agree with the Special Master that this was sufficient to authenticate the printouts of the emails. Having said that, even if this evidence should not have been admitted, it was duplicative of other evidence, and its admission was, therefore, harmless.

Husband's next issue also surrounds the admission of evidence. At trial, Wife sought to introduce into evidence her telephone call to 911 on January 13, 2009, when Husband was ramming his car into hers and trying to push her car into oncoming traffic. Husband objected to the introduction of this evidence because it was not properly authenticated. The Special Master gave Husband the option of agreeing to the admissibility of the evidence, or continuing the trial to give Wife sufficient time to secure the testimony of a 911 representative. Because Husband was unable to make bond, if the trial was continued, he would have been returned to jail until the new hearing date. Husband essentially claims this required him to stipulate to inadmissible evidence or forego his right to a speedy trial.

We note that Husband cites no authority to support his position. In addition, there is no proof whatsoever that even if the trial was postponed so Wife could authenticate the tape-recording, that the new trial date would have been so far into the future as to infringe on Husband's right to a speedy trial. We cannot conclude that it was an abuse of discretion by the Special Master, and we affirm the decision on this issue. We emphasize, however, that even without the 911 tape, there was substantial testimony by Wife as to exactly what happened that day. Given that the vast majority of the contents of the tape-recording was testified to by Wife, its admission, even if error, was harmless.

Husband's next issue involves the burden of proof. There is no disagreement that in order for Husband to be found guilty of criminal contempt, the contempt must be proven beyond a reasonable doubt. When announcing its rulings from the bench, the Special Master inadvertently used the wrong legal standard and stated that the criminal contempt had been proven by a preponderance of the evidence. However, this error was corrected in the final judgment which provides that the criminal contempt violations had been proven beyond a reasonable doubt. Husband argues that it is not clear which standard the Special Master utilized, so at a minimum he is entitled to a new trial.

The comments made by the Special Master following the trial do not constitute the final judgment. The final judgment appealed from is the written judgment entered by the Special Master and confirmed by the Trial Court. In that final judgment, the Special Master specifically stated what burden of proof had been applied. This effectively corrected the previous inadvertent error. In any event, trial courts are given thirty days before a judgment becomes final in order to alter or amend the final judgment. *See* Tenn. R. Civ. P. 59.05. To the extent that use of the wrong

standard was anything more than an inadvertent error, the deficiency was corrected when the final judgment actually was entered. It is clear that beyond a reasonable doubt was the burden of proof standard used in the final judgment now on appeal.

Husband next claims that there was insufficient evidence for the Special Master to find beyond a reasonable doubt that he committed seven acts of criminal contempt. Husband claims that "when all of the evidence improperly admitted by the trial court is discounted, we are left with evidence that consists solely of the [Wife's] uncorroborated testimony that [Husband] committed numerous violations of the order of protection."

We disagree with Husband's assertions for several reasons, the most obvious being that we already have concluded that there was no improperly admitted evidence. Thus, this evidence cannot be "discounted." In addition, in cases such as these, often times a trial court has only the "uncorroborated" testimony of the victim as the aggressor rarely admits to his or her actions. A trial court in this situation must determine if the victim's testimony is credible and otherwise sufficient to constitute proof beyond a reasonable doubt. Here, the Special Master obviously determined that the testimony of Wife and Ms. Lowe was both credible and sufficient.

In *Wells v. Tennessee Bd. of Regents*, our Supreme Court observed:

> Unlike appellate courts, trial courts are able to observe witnesses as they testify and to assess their demeanor, which best situates trial judges to evaluate witness credibility. *See State v. Pruett*, 788 S.W.2d 559, 561 (Tenn. 1990); *Bowman v. Bowman*, 836 S.W.2d 563, 566 (Tenn. Ct. App. 1991). Thus, trial courts are in the most favorable position to resolve factual disputes hinging on credibility determinations. *See Tenn-Tex Properties v. Brownell-Electro, Inc.*, 778 S.W.2d 423, 425-26 (Tenn. 1989); *Mitchell v. Archibald*, 971 S.W.2d 25, 29 (Tenn. Ct. App. 1998). Accordingly, appellate courts will not re-evaluate a trial judge's assessment of witness credibility absent clear and convincing evidence to the contrary. *See Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315, 315-16 (Tenn. 1987); *Bingham v. Dyersburg Fabrics Co., Inc.*, 567 S.W.2d 169, 170 (Tenn. 1978).

*Wells v. Tennessee Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999).

In light of the Special Master's implicit credibility determinations, and Wife's detailed testimony as to Husband's various violations of the order of protection, we conclude that there is material evidence to support the factual findings of the Special Master as confirmed by the Trial Court. We further conclude that those factual findings are sufficient to support the

determination that there was proof beyond a reasonable doubt that Husband violated the order of protection on six different occasions.[5]

Husband's final issue and Wife's only issue are related. Specifically, Husband claims that the Trial Court erred when it imposed a 200 day sentence. Wife claims this issue is moot because Husband has completed his sentence. Because we vacated one of the findings of criminal contempt, we also must vacate 10 days of Husband's sentence. As to the remaining sentence, because Husband was credited with 57 days for time served, his sentence should have been completed in August 2009. There is nothing in the record to indicate that Husband requested a stay of his jail sentence pending appeal. In addition, Husband did not file a reply brief and respond to Wife's argument that this particular issue is moot because the sentence has been served.

In *In re A.G.*, No. M2007-0799-COA-R3-JV, 2009 WL 3103843 (Tenn. Ct. App. Sept. 28, 2009)[6], this Court discussed whether the appeal from a previously imposed criminal contempt sentence was moot if the sentence had already been served. We stated:

> [T]he record shows that Mother has already served the full forty days of her first sentence for contempt. Thus, even if we believed that the trial court committed reversible error in ordering her to serve the remainder of her sentence, which we do not, it is unclear what meaningful relief lies within the power of this court to give her at this point. To all intents and purposes, her first issue is moot. She did not challenge the fact of her conviction of contempt or the length of the incarceration initially imposed. This appeal merely challenges the order "lifting" the suspension of a portion of her sentence.
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> A case will be considered moot if it no longer serves as a means to provide some sort of relief to the party who may prevail or if it no longer presents a present, live controversy. *McCanless v. Klein*, 182 Tenn. 631, 188 S.W.2d 745, 747 (1945). Where a matter has been resolved, that claim must be dismissed [as] moot. *County of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996).
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> > A case is not justiciable if it does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186,

[5] We have not summarized all of Wife's testimony as to Husband's violations of the order of protection and do not feel compelled to do so because Husband acknowledges in his brief on appeal that Wife testified "that [Husband] committed numerous violations of the order of protection."

[6] The time to file a request for permission to appeal to the Tennessee Supreme Court in *In re A.G.* has not yet expired.

> 193 (Tenn. 2000); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998).
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> A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 616. Determining whether a case is moot is a question of law. *Charter Lakeside Behavioral Health Sys. v. Tennessee Health Facilities Comm'n*, 2001 WL 72342, at *5; *Orlando Residence, Ltd. v. Nashville Lodging Co.*, No. M1999-00943-COA-R3-CV, 1999 WL 1040544, at *3 (Tenn. Ct. App. Nov. 17, 1999) (No Tenn. R. App. P. 11 application filed).
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> *Alliance for Native American Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005).
>
> Mother's appeal of the imposition of the portion of a sentence that had been suspended is moot since she has served that sentence. Accordingly, that portion of this consolidated appeal should be dismissed.

*In re A.G.*, 2009 WL 3103843, at *5. *See also McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994)("[A]n appeal concerning the legality of a prisoner's incarceration becomes moot upon the prisoner's unconditional release. *State ex rel. Lewis v. State*, 208 Tenn. at 538, 347 S.W.2d at 49 [(Tenn. 1961)]; *State v. Doe,* 813 S.W.2d 150, 152 (Tenn. Crim. App. 1991)").

With respect to the six remaining counts of criminal contempt, we find Husband's final issue to be moot. Because Husband has already served his sentence, any challenge to the length of that sentence presents no justiciable controversy. As stated *supra* at note 2, because Husband also was ordered to pay Wife's attorney fees, only Husband's final issue is rendered moot by his completion of the jail sentence.

## Conclusion

One of the two findings of criminal contempt arising from the emails between Husband and Ms. Lowe is vacated. The remaining six findings of criminal contempt and the sentence imposed for those violations is affirmed. This case is remanded to the Trial Court for

collection of the costs below. Exercising our discretion, costs on appeal are taxed to the Appellant, Kevin Carl Dockery, Sr., and his surety, if any, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE